

EU Commission Response to ITSSD Precautionary Preference Study

Mon, Aug 22, 2005 3:36 am

Many thanks, Lawrence, for your considered reply. You ask for my "thoughtful response". Difficult, as I've just returned from 2 weeks' vacation, and face the usual hundreds of emails. Let me just say that I agree with so much of what you have written, that I might have difficulty arguing against it. We in the Research Directorate-General have in general fought for science-based regulation - or indeed no regulation, where the cost-benefit balance does not seem to warrant it - but we have lost many battles over the years, particularly in the area of biotechnology, which I've been following since late 1979.

Your efforts are much appreciated; keep fighting.

Best,

Mark Cantley

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(RTD)

Fri, Aug 19, 2005 3:26 pm

Dear Mr. Cantley:

Thank you for your correspondence of several weeks ago concerning the ITSSD's recently released study about the precautionary principle's adverse effects on global industry, and in particular, on the American free enterprise system.

Please be assured that the ITSSD and I have written extensively about government and industry use of the precautionary principle as a disguised protectionist trade barrier. We have also not been reluctant to advocate in favor of a case-by-case facts, empirical science and economics (cost-benefit)-based precautionary *approach* in lieu of a politics and fear-based 'wing-spread' precautionary principle that is premised on a broad administrative presumption of hazard, that is neither sanctioned by WTO law nor by the UN Rio Declaration.

Please also be assured that I have cited and discussed the EU Commission's Communication on the Precautionary Principle in several of the papers I have prepared, including those for the National Foreign Trade Council, now posted on the WTO website.

You are not the first to make the ad-hominem claim that our arguments criticizing how the precautionary principle has been employed (operationalized in EU/UN-speak) by the EU Commission and member state governments is propaganda-based. Actually, Mr. Tony Van Der Haegen, EU Commission Minister-Counselor for Agriculture, Fisheries, Food Safety and Consumer Affairs, formerly of the Delegation of the EU Commission in Washington DC, quite eloquently argued this way almost two years ago, at a joint New York City Bar Association - International Law Association International Law weekend panel discussion. His comments were then subsequently posted on the EU Commission website for the world to see. Unfortunately, however, Mr. Van Der Haegen's near-soliloquy failed to address ANY of the substantive issues discussed in the white papers. Your preliminary comments seem to do the same, but I still have hope. I trust that, as you read the heavily documented papers on the ITSSD website you will come

to recognize that the EU Commission needs to publicly address the issues it continues to 'duck', and to not merely respond to popular politics or emotions.

The ITSSD and I welcome the opportunity to meet with representatives of the EU Commission, either in Washington or Brussels, to address the substantive issues, point-by-point, if necessary. Perhaps the EU Commission would consider granting the ITSSD an NGO travel-education grant, much as it has to the environmental and social activists in Europe, to finance such a trip to Brussels, in the name of greater public awareness and transparency.

You and your colleagues at the Commission might wish to consider that at least one European-based free-market think tank agrees with the findings of our study, and has dared to write about them in the Brussels Business Journal. Please see the attached.

<http://www.brusselsjournal.com/node/187>

We appreciate your interest and look forward to your thoughtful response.

Sincerely,

Lawrence Kogan

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Mon 8/1/2005 5:03 AM

Dear Mr Kogan,

Thank you for making available via announcement in AgBioView and the web your ITSSD paper, "Precautionary Preference: How Europe's New Regulatory Protectionism Imperils American Free Enterprise". As I downloaded this from the ITSSD site just a short while ago, I have of course not read it completely, but on going through the Executive Summary, I was struck in section II, "WHAT IS THE PRECAUTIONARY PRINCIPLE?", by paragraph B, "Dispenses With Economic Cost-Benefit Analysis". In this paragraph, you state that "EU regulators who employ the precautionary principle ... have dismissed the need to undertake an economic cost/benefit analysis".

I write - in a personal capacity, but as a staffer of the European Commission - to express to you my surprise at this statement. I have tried in a quick search through the full version of your paper to identify any reference to the European Commission's communication on the precautionary principle, reference COM(2000)1. This engaged the efforts of over 20 staff from many services of the Commission during more than a year, and it was not by accident that it received the first

reference number of the new millennium - we saw it as a communication of outstanding importance, given the growing pressure from the political side for more explicit attention to the precautionary principle, within Europe and in international instruments such as the Cartagena Protocol on BioSafety.

My search does not indicate any reference to it, though in haste I may have overlooked it; but I attach a copy. Please let me know if I have missed a reference to it in your paper. In the Summary of the communication, paragraph 6 provides this résumé of the key points, discussed in more detail elsewhere in the Summary, and more fully in the body of the paper:

"Where action is deemed necessary, measures based on the precautionary principle should be, *inter alia*:

- *proportional* to the chosen level of protection,
- *non-discriminatory* in their application,
- *consistent* with similar measures already taken,
- *based on an examination of the potential benefits and costs* of action or lack of action (including, where appropriate and feasible, an economic cost/benefit analysis),
- *subject to review*, in the light of new scientific data, and
- *capable of assigning responsibility for producing the scientific evidence* necessary for a more comprehensive risk assessment."

You will note in this the very explicit reference to the use of cost-benefit analysis - quite contrary to the allegation in your paragraph II.B, cited above.

I am concerned myself that we do not always follow the points emphasised in this communication, nor acknowledge the essentially dynamic character of any decisions made under the precautionary principle. But at first glance, it seems to me that your new paper is seriously misrepresenting the position of the Commission. For me, this immediately raises a very basic question about the balance and credibility of your whole paper; and indicates that it is not balanced, but may rather be selective in its choice of materials and its presentation, for essentially propagandist purposes.

Given the scale of effort obviously invested in the preparation of your paper, I would be surprised and disappointed; but I confess that I am not familiar with the work of the ITSSD, and am interested to know more about the standards and quality of its work.

I look forward to hearing from you.

Mark Cantley

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